

State Notes

TOPICS OF LEGISLATIVE INTEREST

July/August 2005



Comprehensive Transportation Fund Revenue Reductions **By Craig Thiel, Fiscal Analyst**

Overview

The Comprehensive Transportation Fund (CTF) is created in Section 10b of Public Act (P.A.) 51 of 1951 to provide operating and capital funding for various public and freight transportation programs contained in the annual State transportation budget. The Comprehensive Transportation Fund receives State revenue from two principal sources, the Michigan Transportation Fund (MTF) and a portion of the State sales tax on motor vehicle-related sales. The Fund also receives State revenue from licenses, permits, interest earnings, and miscellaneous sources. In fiscal year (FY) 2000-01, total State CTF revenue was \$237.5 million. Recent revenue estimates for FY 2004-05 project CTF revenue at \$225.2 million. Despite an increase in both total MTF and total State sales tax revenue since FY 2000-01, actual CTF revenue has declined 5.2%. The reason for this decline is directly related to efforts to balance the State's General Fund budget with revenue that traditionally went to the CTF. Specifically, since FY 2000-01, \$65.1 million of CTF revenue has been redirected, directly or indirectly, to help support General Fund budget items and/or other transportation priorities.

This article describes how much CTF revenue has been redirected over the past four years to help balance the General Fund budget and support other transportation programs, and the impacts of such reductions.

Two Sources of Revenue

Article IX, Section 9 of the Michigan Constitution allows up to 10% of the specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and on registered motor vehicles, after payment of necessary collection expenses, to be used for comprehensive transportation purposes. These transportation taxes are deposited in the MTF under Michigan law. Section 10 of P.A. 51 of 1951 requires that 10% of MTF revenue, after certain statutory earmarks, be transferred to the CTF. The largest earmark of MTF revenue, before the CTF distribution, is four cents of the State gasoline tax, estimated to be \$196.8 million in FY 2004-05 which supports State and local road and bridge programs.¹ As a result of these statutory earmarks, the CTF's effective share of MTF revenue in FY 2004-05 is estimated to be 8.5%, about \$29.1 million less than the constitutional limit of 10%.

The CTF also receives a share of State sales tax collections on certain purchases of fuel and automotive items. Article IX, Section 9 allows not more than 25.0% of the State sales tax revenue at the 4.0% rate from motor vehicle-related sales, after payment of necessary collection expenses, to be used for comprehensive transportation purposes. Of the total revenue from the 4.0% sales tax on motor vehicle-related sales, 6.0% is distributed to the CTF. This amount is

¹ In addition to earmarking 4 cents of the gasoline tax, Section 10 of P.A. 51 distributes funding for collection and administrative costs (\$45.5 million in FY 2004-05), \$3.0 million to the rail grade crossing account, not less than \$3.0 million for Critical Bridge Fund debt service, and \$43.0 million for State Trunkline Fund debt service, prior to the CTF distribution.



substantially less than the 25.0% constitutional ceiling. Table 1 lists State CTF revenue by source for the period FY 2000-01 through FY 2004-05.

Table 1
Comprehensive Transportation Fund Revenue
(millions of dollars)

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05^{a)}
MTF Revenue	\$159.2	\$159.8	\$162.3	\$166.3	\$168.6
Sales Tax Revenue	73.7	66.1	79.4	65.0	55.3
Other Revenue	4.6	2.2	4.6	4.4	1.3
Total	\$237.5	\$228.1	\$246.3	\$235.7	\$225.2

^{a)} Estimate as of May 2005

Source: MDOT, Comprehensive Annual Financial Report

Despite the fact that total MTF revenue and total auto-related sales tax revenue have increased over the past five years, total CTF revenue has declined. During the five-year period, total MTF revenue increased from \$1,913.5 million to \$1,995.8 million, or 4.3%. Table 1 shows that the CTF portion of the MTF correspondingly increased by 5.9% during this period.² During the same period, total auto-related sales tax revenue increased from \$1,053.3 million to \$1,088.2 million, or 3.3%. However, as Table 1 displays, sales tax revenue earmarked to the CTF declined by 25.0% over the past five years and as a result total CTF revenue declined 5.2%.

Redirecting CTF Revenue

The reason for the CTF revenue decline during the past five years is directly related to efforts to balance the overall State budget with a portion of the revenue traditionally dedicated for transportation purposes. It is estimated that over \$65.1 million in total CTF revenue (a combination of State sales tax and MTF revenue) has been redirected, directly or indirectly, to the General Fund since FY 2000-01. While all motor fuel and vehicle registration tax revenue deposited in the MTF, including the portion earmarked for the CTF, is constitutionally restricted for transportation purposes, the sales tax revenue deposited in the CTF is statutorily earmarked and the entire amount can be redirected to support the General Fund budget.

Since FY 2001-02, \$45.5 million of sales tax revenue traditionally earmarked to the CTF has been channeled to the General Fund, by Executive Order and changes to Section 25 of the General Sales Tax Act. Table 2 lists the various CTF revenue changes since FY 2001-02 intended to aid the General Fund budget, either directly or indirectly. First, Executive Order 2001-9 reduced the amount of sales tax revenue deposited in the CTF under Section 25 by \$12.75 million and transferred this revenue to the General Fund for FY 2001-02.³

² The reason for the difference between the two growth rates has to do with the amount of MTF interdepartmental grants appropriated in FY 2000-01 (\$50.3 million) and in FY 2004-05 (\$29.0 million) and the impact that the P.A. 51 formula has on CTF revenue.

³ In 2002, the County Road Association of Michigan (CRAM) sued the State of Michigan over the constitutionality of this transfer. In 2002, the trial court enjoined the transfer of CTF funds to the General Fund. In 2003, the Court of Appeals upheld the constitutionality of the transfer. Plaintiffs have filed an Application for Leave to Appeal to the Michigan Supreme Court.



Table 2

Comprehensive Transportation Fund Revenue Reductions (millions of dollars)				
	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
Executive Order 2001-9	(\$17.6)	(\$4.8)		
P.A. 139 of 2003			(\$10.8)	(\$10.9)
P.A. 151 of 2003			(10.0)	
P.A. 544 of 2004				(10.0)
House Bill 4082 ^{a)}				(1.1)
Total	(\$17.6)	(\$4.8)	(\$20.8)	(\$22.0)

^{a)} Based on House-passed version (H-4).

Public Act 139 of 2003 reduced the percentage of revenue from the 4.0% sales tax on auto-related sales that is deposited in the CTF from 7.0% to 6.0% for a two-year period, FY 2003-04 and FY 2004-05. Based on actual sales tax revenue figures for FY 2003-04, P.A. 139 reduced CTF revenue by \$10.8 million and increased General Fund revenue by the same amount. For FY 2004-05, the rate reduction is expected to decrease CTF revenue by \$10.9 million and increase General Fund revenue by the same amount. It is worth noting that the Governor's FY 2005-06 budget recommendation is based on statutory changes that would continue this revenue redirection.

Public Act 544 of 2004 further reduced the amount of sales tax revenue deposited in the CTF by a flat \$10.0 million for FY 2004-05 and increased General Fund revenue by the same amount.

In addition to the changes in the disposition of sales tax revenue, MTF allocations to the CTF have been reduced as a means to help balance the General Fund budget and to support other transportation priorities. First, Executive Order 2001-9 increased the MTF grants to the Departments of State and Treasury by a total of \$48.0 million and reduced General Fund appropriations in these Departments by a corresponding amount.⁴ This funding shift effectively reduced the amount of MTF revenue deposited in the CTF by \$4.8 million in FY 2001-02. This funding shift continued in the next fiscal year, costing the CTF another \$4.8 million in MTF revenue in FY 2002-03.⁵

Second, as part of the MTF revenue enhancement package enacted in 2003, Public Acts 151 and 152 changed the registration cycle for trailers from an annual basis to a one-time basis. The package of legislation resulted in a one-time MTF revenue increase of \$108.0 million. However, this legislation redirected \$10.0 million of the CTF's portion of the revenue increase (\$10.8 million) to the State Trunkline Fund for highway capacity improvement projects.

⁴ Traditionally, these grants are set in annual appropriation bills. In FY 1996-97, MTF grants to all agencies totaled \$90.3 million. These grants were reduced to about \$48.0 million annually between FY 1997-98 and FY 2000-01, before being doubled to \$95.7 million under Executive Order 2001-9.

⁵ The FY 2002-03 MTF grant to the Department of State was \$87.9 million. In 2003, the MTF grant to the Department of State was statutorily capped at \$20.0 million per fiscal year, beginning in FY 2003-04.



Third, as part of the FY 2004-05 General Fund budget solution, GF/GP appropriations to the Department of State were reduced by \$10.6 million under Executive Order 2005-7 and replaced with restricted revenue appropriations under P.A. 11 of 2005. House Bill 4082 would transfer approximately \$10.5 from the MTF to satisfy the restricted revenue appropriations contained in P.A. 11. This funding shift would effectively reduce CTF revenue in FY 2004-05 by \$1.1 million. The Governor's FY 2005-06 budget assumes that this be a permanent revenue shift, costing the CTF another \$1.1 million.

Impacts of CTF Revenue Reductions

State CTF revenue is used to support a variety of public and freight transportation programs, which receive funding through the annual Michigan Department of Transportation (MDOT) budget.⁶ The first priority of this revenue, as set forth in P.A. 51 of 1951, is to pay principal and interest on outstanding CTF debt, which is approximately \$28.5 million in the current year. The second priority is the payment of MDOT's costs associated with administering the CTF, which are approximately \$8.3 million this year. The third priority and the largest use of this revenue by far, is the annual operating assistance grants provided to local public transit agencies. Over two-thirds of the total appropriated CTF revenue, \$161.7 million, is budgeted for this purpose in FY 2004-05. The remainder of available CTF revenue is reserved for public transportation purposes as described in P.A. 51. In some cases, P.A. 51 establishes minimum funding levels for select public transportation programs.⁷ It is estimated that \$194.5 million in CTF revenue in FY 2004-05 is needed to satisfy these three priorities and the minimums set in P.A. 51.

Beginning with Executive Order 2001-9, the series of CTF revenue reductions listed above required appropriation reductions to bring spending in line with revenue availability each year. For the most part, CTF program cuts have focused on discretionary funding, i.e., funding for those programs that are not listed as "priority" or do not have a "funding floor". The FY 2004-05 budget reduced or eliminated funding for many of these programs. Table 3 shows CTF appropriations in FY 2003-04 compared with FY 2004-05 for CTF-funded programs and the changes resulting from recent budget cuts. Continued revenue reductions will force further cuts to or eliminations of discretionary programs in order to meet P.A. 51 priorities and minimums. It is worth noting that, as a result of the CTF revenue decline, the current-year budget does not meet the P.A. 51 funding requirements for the Intercity Passenger and Freight Program, which is 10.0% of the CTF.⁸

⁶ In addition to annual appropriated State CTF revenue, MDOT uses CTF bond proceeds to fund various transportation programs, mostly capital projects. This money, however, is not included in the annual MDOT budget.

⁷ For example, P.A. 51 requires that each transit agency annually receive at least the amount of CTF revenue it received in FY 1996-97 for local bus operating assistance grants, which amounts to \$121.3 million.

⁸ CTF funding for this program totals \$16.3 million, about \$6.2 million below the P.A. 51 floor.



Table 3

CTF-Funded Programs in MDOT Budget (CTF amount in millions of dollars)			
Program	FY 2003-04	FY 2004-05	Change
Debt Service	\$28.7	\$28.5	(\$0.2)
Administration	5.0	5.5	0.5
Grants to Other Agencies	3.0	3.1	0.1
Bus Operating Grants	161.7	161.7	0
Bus Capital	14.5	8.0	(6.5)
Intercity Passenger & Freight Programs	21.0	16.3	(4.7)
Public Transportation Development Programs	12.5	9.2	(3.3)
Total	\$246.3	\$232.3^{a)}	(\$14.0)
^{a)} At this level, the CTF budget is out of balance by approximately \$7.0 million. The State Budget Office will reduce appropriation allotments and use prior-year revenue to bring spending into alignment with projected revenue of \$225.2 million.			

Despite the large share of CTF funding directed to the program, appropriations for local bus operating assistance grants have remained fairly constant the past three fiscal years and have avoided requisite budget cuts. The FY 2004-05 appropriation remains \$40.4 million above the P.A. 51 "floor" for these grants. Although protected from hard budget cuts, the CTF revenue reductions have affected the State operating grants indirectly. Stagnant State funding means that local agencies will have to tap other funding sources to maintain budgets or face service reductions. Transit providers will be forced to address the rising operational costs (fuel, health care, etc.) they are facing with revenue from increased local sources or fares. State reimbursement rates, as a percentage of total operating costs, have declined significantly during the period FY 2000-01 to FY 2004-05. During this time, the urban systems' reimbursement rate has gone from 38.1% to 32.4% while the other systems' rate has dropped from 45.5% to 38.4%.⁹ Given the current State funding environment, it is unlikely that local agencies will be able to expand local bus service without additional State CTF assistance. Most likely, agencies will focus on providing the status quo service level before considering expanded service.

While State funding for operational grants has not been affected, State support for local bus capital projects has been cut. For example, the FY 2004-05 budget reduced the appropriation used to match Federal funds for local bus capital to the P.A. 51 "floor" of \$8.0 million from \$14.5 million in FY 2003-04 (Table 3). Traditionally, MDOT has used CTF money to provide the full 20% non-Federal match for local bus capital projects (e.g., bus acquisitions, terminal projects, transit equipment).¹⁰ Continued revenue reductions may prevent the State from being able to provide the entire portion of the non-Federal match for local bus capital projects. This could force local transit agencies, for the first time, to supply a portion of the non-Federal match from local sources of revenue. If local agencies are unable or unwilling to make up the shortfall in requisite matching funds, Federal capital funds could be forfeited.

⁹ Public Act 51 requires the CTF to provide urban agencies (with a population greater than 100,000) with a grant of up to 50.0% of operating expenses and other agencies (population less than or equal to 100,000) with a grant of up to 60.0% of operating expenses.

¹⁰ MDOT uses a combination of appropriated CTF revenue and CTF bond proceeds revenue to meet the non-Federal match.



Conclusion

As the Legislature continues to grapple with State revenue issues and the challenges of balancing the General Fund budget, it is likely that some portion of transportation revenue will be redirected to address other State priorities. Because constitutional restrictions prevent State fuel and vehicle registration taxes from being used for nontransportation purposes, the vast majority of State transportation revenue cannot be shifted to address General Fund budget shortfalls. However, sales tax revenue that is used to support various public and freight transportation programs can be redirected to the General Fund. To date, over \$65.1 million in traditional CTF revenue has aided the General Fund budget. It is likely that CTF-funded programs will continue to be adversely affected by the State's budget woes. For example, the FY 2005-06 budget recommendation includes a continuation of a reduction in CTF sales tax revenue (\$10.8 million), originally scheduled to end after FY 2004-05. Policy-makers will not know immediately what the full impact of these CTF revenue changes will mean to public and freight transportation services provided in Michigan. To date, however, a number of programs have been eliminated and services reduced.

State Notes

TOPICS OF LEGISLATIVE INTEREST

July/August 2005



The Board of State Canvassers Revisited **By Suzanne Lowe, Bill Analysis Coordinator**

An article in the September/October 2002 issue of *State Notes: Topics of Legislative Interest* described the Board of State Canvassers and provided an overview of its role in certifying petitions for statewide ballot proposals. Although the Board is rarely on most people's "radar screens", it again has been in the news due to a petition filed by the Michigan Civil Rights Initiative (MCRI) Committee. Since the Board did not certify the petition at its July 15, 2005, meeting, the MCRI has taken the matter to the Michigan Court of Appeals. This article discusses recent developments concerning the Board, including Court of Appeals decisions and legislative proposals.

To recap the previous *State Notes* article: The Board of State Canvassers is an entity mandated by the Article 2, Section 7 of the State Constitution, and established by the Michigan Election Law. The board consists of four members, including two from each major political party, appointed by the Governor with the advice and consent of the Senate. At least three members must be in agreement for the Board to take action.

Pursuant to constitutional and statutory provisions, the Board is responsible for determining the "validity and sufficiency of the signatures" on a petition to amend the Constitution. The Election Law also requires the Board to "ascertain if the petitions have been signed by the requisite number of qualified and registered electors" and "to make an official declaration of the sufficiency or insufficiency of a petition". It is these responsibilities, and the extent of the Board's role in fulfilling them, that have been the focus of considerable debate and litigation over the years.

Court of Appeals Decisions

Before the latest controversy involving the MCRI petition, the Board was in the spotlight preceding the November general elections in 2002 and 2004. The 2002 disputes involved proposed constitutional amendments that dealt with 1) the distribution of tobacco settlement revenue, and 2) the sentencing or treatment of drug offenders. After the Board deadlocked on the tobacco settlement petition and found that the drug sentencing petition was insufficient, the interested parties filed actions in the Court of Appeals. The Court agreed with the Board on the drug sentencing petition but ordered the Board to certify the tobacco settlement petition for the ballot. Both cases involved the extent to which a petition must identify existing constitutional provisions that a proposal would amend or abrogate, as required by the Election Law, and the responsibility of the Board to determine whether a petition meets this requirement. In keeping with Michigan Supreme Court and Court of Appeals precedent, the Court held in the tobacco settlement case that "...the Board of Canvassers' authority does not extend to conducting a complex legal analysis of constitutional issues" (*Citizens for a Healthy Michigan v Board of State Canvassers*, No. 243505). Regarding the drug sentencing petition, the Court found that no legal analysis was required to conclude that the petition was defective (*Michigan Campaign for New Drug Policies v Board of State Canvassers*, No. 243506).



In 2004, the Court of Appeals again addressed two petitions that the Board did not certify. The first, which was ultimately placed on the ballot and approved by the voters, proposed a constitutional amendment stating, "To secure and preserve marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose." After the Board had previously approved the form of the petition, it split evenly on whether to certify the proposal at two meetings in August 2004. According to the Court, at the first meeting two members declined to certify the proposal on the basis that it was unlawful and unconstitutional. At the second meeting, two Board members voted against ballot language proposed by the Bureau of Elections, expressing concern that the description did not reflect the fact that the proposal could be interpreted to prohibit the recognition of existing or future domestic partnerships between a man and a woman or between a same-sex couple, or to prohibit health insurers from providing a plan allowing benefits to unmarried couples, either opposite sex or same-sex.

The Court concluded that the Board erred in considering the merits of the marriage proposal (*Citizens for Protection of Marriage v Board of State Canvassers, et al.*, 263 Mich App 487). The Court stated, "The Board comes within the definition of an 'agency' in the Administrative Procedures Act...An agency has no inherent power. Any authority it may have is vested by the Legislature, in statutes, or by the Constitution...The Board's authority and duties with regard to proposed constitutional amendments are limited to determining whether the form of the petition substantially complies with the statutory requirements and whether there are sufficient petition signatures to warrant certification of the proposal."

While the other disputed petition in 2004 did not propose a constitutional amendment, it also raised the issue of the Board's authority to determine the sufficiency of petitions. This case involved a petition seeking to nominate Ralph Nader as an independent candidate for the office of the President of the United States (*Deleeuw, et al. v Board of State Canvassers, et al.*, 263 Mich App 497). After the Secretary of State determined that there was a sufficient number of valid signatures, the petition was challenged because most of the signatures had been obtained by members and officials of the Republican party. At its August 2004 hearing on the challenge, the Board of State Canvassers was unable to reach a decision.

The Court of Appeals, in its opinion, repeated the language quoted above about the Board's status as an "agency". The Court pointed out that, under the Election Law, the Board's "sole duty" with regard to qualifying petitions is to determine the validity of the signatures on them, including those of the people who circulate the petition, whether they are the signatures of registered voters, and whether there are sufficient valid signatures to certify the petition. "There is nothing in the statute that would permit the board to look behind the signatures to determine the motives of the individual signatories or the motives or desires of the candidate." The Court held that the Board had breached its clear legal duty to certify the petition.

MCRI Petition

On January 6, 2005, the MCRI Committee filed with the Secretary of State a petition to put the following language on the November 2006 general election ballot:



A proposal to amend the constitution to prohibit the University of Michigan and other state universities, the state, and all other state entities from discriminating or granting preferential treatment based on race, sex, color, ethnicity, or national origin.

On April 18, 2005, a group known as “By Any Means Necessary” (BAMN) (or the Coalition to Defend Affirmative Action, Integration, Immigrant Rights and Fight for Equality by Any Means Necessary) filed a challenge to the petition, based on alleged misrepresentation of the petition by the circulators. According to opponents of the petition, a majority of the people who signed the petition forms were told by circulators that it was in *support* of affirmative action (“Deceptive Tactics Alleged in Attempt to Ban Affirmative Action”, by T.C. Allen, *Michigan Chronicle*, April 27-May 5, 2005).

On July 15, 2005, the Chief Deputy Attorney General gave the Board of State Canvassers a copy of a letter (of the same date) to State Representative Leon Drolet, in which the Deputy Attorney General responded to several questions the Representative had asked regarding the process of challenging signatures on petitions submitted to the Board. In particular, according to the letter, the majority of the questions “relate to whether the Board may consider claims of ‘fraudulent inducement’ or ‘fraudulent misrepresentation’ in determining the validity and sufficiency of petition signatures”. Based on an analysis of the Constitution and the Election Law, and the Court of Appeals opinions in *Citizens for Protection of Marriage* and *Deleeuw*, as well as other pertinent decisions of the Court of Appeals and Supreme Court, the Deputy Attorney General concluded that the Board may not consider such claims “...because neither the Michigan Constitution nor Michigan laws expressly or implicitly grant the Board the authority to do so”. In response to another question, the Deputy Attorney General also concluded that a signer of a petition to amend the Constitution may not have his or her signature removed once the petition has been filed with the Secretary of State.

According to the Bureau of Elections, in the Department of State, the number of signatures required to put the MCRI petition on the ballot is 317,757. The total filing contained 508,159 signatures. Based on the results of random sampling, the Bureau determined that an estimated 455,373 valid signatures appear on the petition. The Elections Director recommended that the Board of State Canvassers certify the petition as sufficient.

The Board held a hearing on the petition on July 19, 2005. After approximately six hours of testimony and discussion, the Board voted on several motions, none of which was approved. The motions included the following:

- 1) A motion that the Board of State Canvassers, with the assistance of the Secretary of State, investigate challenges to the petition and conduct hearings.
- 2) A motion that the Board reject the petition as insufficient and constitutionally infirm.
- 3) A motion that the Board certify the petition.
- 4) A motion that the Board reject the petition because of a conflict between the summary and the actual text of the petition.



The Board members split two to two on the first, second, and fourth motions. The motion to certify the petition received two “no” votes, one “yes” vote, and one abstention.

On August 2, 2005, the MCRI Committee filed a brief with the Court of Appeals, “asking it to require the Board to fulfill its legal duty to Michigan voters and certify the petitions”, according to an MCRI news release.

Legislative Proposals

Article 2, Section 7 of the State Constitution provides, “A board of state canvassers...shall be established by law”, and governs its membership. The Constitution does not, however, specify the Board’s functions or duties, which are set forth in the Michigan Election Law. (Constitutional provisions concerning the certification of ballot proposal petitions assign responsibilities to “the state officer authorized by law” or “the person authorized by law”. The Election Law states that those terms refer to the Board of State Canvassers.) Thus, although the Board is constitutionally mandated, its authority is prescribed by statute and can be changed by legislation.

Earlier this year, the Michigan House of Representative and the Senate passed House Bill 4275, which proposed an amendment to the Michigan Election Law that would require the Board of State Canvassers to declare a ballot question petition sufficient unless it determined that the petition was not in proper form or that the number of valid signatures was less than the required minimum number. The bill also stated that, in determining the sufficiency of the petition form, the Board could not consider the substance of the proposal affixed to the petition. According to proponents of the legislation, enacting this language could help prevent future litigation like that seen before the last two general elections.

Governor Granholm vetoed House Bill 4275 on July 21, 2005. In her veto message, the Governor referred to the unwillingness of the Board to approve the MCRI petition “...given the serious nature of the alleged fraud and misrepresentation”. The Governor expressed concern that “...House Bill 4275 could be interpreted to interfere with the ability of the Board of State Canvassers to canvass petitions, make official declarations on the sufficiency or insufficiency of petitions, hold hearings upon any complaints filed, or conduct investigations of petitions”.

On July 29, 2005, Senator Alan Cropsey announced in a news release that “...legislation is being drafted to address an out-of-control Board of State Canvassers that has repeatedly violated the law and disenfranchised voters by overstepping its authority and making politically charged decisions”. According to the news release, the legislation would transfer duties of the canvassers to the Bureau of Elections.

State Notes

TOPICS OF LEGISLATIVE INTEREST

July/August 2005



Fire Service Fees

By Elizabeth Pratt, Fiscal Analyst, and Maria Tyszkiewicz, Fiscal Analyst

In response to the multiple requests for information regarding the funding for programs administered by the Office of Fire Safety in the Department of Labor and Economic Growth, this article is intended to provide an overview of the issue.

Background

The Office of Fire Safety is part of the Bureau of Construction Codes in the Department of Labor and Economic Growth (DLEG). The Office of Fire Safety has responsibility for programs, including review of plans and construction inspections for adult and child care facilities homes, adult foster care, correctional facilities, critical medical care facilities, dormitories, hospitals, nursing homes, schools, and similar facilities. The Office also performs annual inspections of hospitals, homes for the aged, nursing homes, adult foster care homes, and alternative intermediate service facilities for the mentally retarded and related institutions.

These programs were previously located in the Fire Marshal Division of the Department of State Police. They were transferred to DLEG in two executive orders. The first transfer was pursuant to Executive Order 1997-2, which moved the following programs out of the Department of State Police to the Office of Fire Safety in the former Department of Consumer and Industry Services:

- Plan review and fire safety inspection functions
- Fire inspector certification and training
- Fire alarm and fire suppression system installation, documentation, and certification
- Fire extinguisher compound use approval
- Hazardous chemicals in the workplace
- The State Fire Safety Board

The second transfer was pursuant to Executive Order 2003-18. This order created the Department of Labor and Economic Growth and included a variety of provisions that consolidated like functions around the State under various departments. This Executive Order included the transfer of the following programs from the Department of State Police, Fire Marshal Division, to the Department of Labor and Economic Growth, Bureau of Construction Codes and Fire Safety:

- Juvenile Fire Setter Intervention Program
- Public Fire Education Program
- Fire Fighters Training Council

The total appropriation for the Fire Safety Programs for FY 2004-05 is \$5,965,500. The Governor's FY 2005-06 recommendation for this line includes a slight economic increase of \$125,300, which would bring the total recommended appropriation to \$6,183,800. The allocation for the specific programs within this office is shown in Table 1.



Table 1

Office of Fire Safety Program Allocations		
Program	FY 2004-05 Appropriation Allocation	FY 2005-06 Governor's Recommendation
Fire Fighting Training Council	\$1,602,600	\$1,680,600
Fire Marshal Program	\$404,500	427,600
Fire Safety Program	3,958,400	4,075,600
Total	\$5,965,500	\$6,183,800

Source: Department of Labor and Economic Growth

Funding History

The Fire Marshal Division in the Department of State Police primarily was funded with General Fund/General Purpose revenue until fiscal year (FY) 1995-96, when fees were approved for the first time to provide partial funding for the unit. Public Act 147 of 1996 established fees for plan review and construction inspections for hospitals and schools and an annual operation and maintenance inspection fee for hospitals. These fees initially were established in statute (MCL 29.2c) for the second half of FY 1995-96 only, with direction that subsequently they should be set annually in the appropriations act. General Fund/General Purpose (GF/GP) appropriations continued to support plan review and construction inspections for other institutions such as child and adult care centers, adult foster homes, and penal institutions. Remaining operations, including the Fire Fighter Training Council, also were supported by General Fund appropriations at that time.

The fees for plan review and construction inspections for schools and hospitals were changed several times since FY 1995-96. The annual operation and maintenance inspection fee for hospitals originally was established in FY 1995-96 at \$10 per bed, but was reduced to \$8 per bed in FY 1999-2000 and has remained at that level.

Plan review and construction inspection fees are assessed based on the cost of the construction project. The minimum plan review and inspection fee of \$100 was charged for projects with a cost of \$85,000 or less. For more extensive projects, fees were assessed based on a dollar amount for each \$1,000 of project cost. Beginning in FY 1997-98, a maximum fee of \$50,000 was established. These fees were increased in FY 1999-2000 and most recently in FY 2001-02. The plan review and construction inspection fees for hospitals and schools are summarized in Table 2.



Table 2

Plan Review and Construction Inspection Fees For Hospitals and Schools FY 1995-96 Through FY 2004-05					
Project Cost Range	FY 1995-96 and FY 1996-97	FY 1997-98 and FY 1998-99	Project Cost Range	FY 1999-2000 and FY 2000-01	FY 2001-02 through FY 2004-05
\$85,000 or less (Minimum fee)	\$100.00	\$100.00	\$101,000 or less (Minimum fee)	\$125.00	\$155.00
	(fee per \$1,000 of project cost)	(fee per \$1,000 of project cost)		(fee per \$1,000 of project cost)	(fee per \$1,000 of project cost)
\$85,001 to \$1,500,000	\$1.18	\$1.18	\$101,001 to \$1,500,000	\$1.24	\$1.60
\$1,500,001 to \$10,000,000	\$0.80	\$0.80	\$1,500,001 to \$10,000,000	\$0.90	\$1.30
\$10,000,001 or more	\$0.50	\$0.50	\$10,000,001 or more	\$0.70	\$1.10
Maximum Fee	None	\$50,000	Maximum Fee	\$50,000	\$60,000

In FY 2002-03, combined General Fund support for the Office of Fire Safety as expended in both the Department of Consumer and Industry Services and the Department of State Police budgets totaled \$2,572,829. Due to budgetary pressures on the General Fund, the GF/GP funding was steadily reduced starting in FY 2002-03, leading to its eventual elimination as a source of revenue to support this program by FY 2004-05. Restricted funds have been used to replace some of the GF/GP support, particularly through increased spending from the Fire Service Fee Fund and from the Construction Code Fund. Staff from DLEG provided data for the following three-year summary of funding for the Office of Fire Safety shown in Table 3, which illustrates the fund shift that has taken place from GF/GP to restricted fund sources, in particular the shift from GF/GP to Construction Code Fund in FY 2003-04 and FY 2004-05. Additionally, in Table 4 a list of the various GF/GP reductions is included to show the steady reductions that have resulted in the total reliance on restricted fund sources.

Table 3

Office of Fire Safety Fund Shift GF/GP to Restricted FY 2002-03 to FY 2004-05			
	FY 2002-03 ^{a)}	FY 2003-04 ^{a)}	FY 2004-05 ^{b)}
Federal	\$609,072	\$866,874	\$1,107,300
Inter-Departmental Grant	76,209	80,963	111,100
Fire Alarm Fees	91,600	0 ^{c)}	0
Fire Service Fees Fund	2,800,000	2,100,000	2,100,000
Construction Code Fund	0	866,549	2,647,100
General Fund/General Purpose	2,572,829	1,698,100	0
Total	\$6,140,710	\$5,612,486	\$5,965,500
^{a)} Actual expenditures. ^{b)} Appropriated amounts. ^{c)} Fire alarm fees were combined in the Construction Code Fund for FY 2003-04.			

Source: Department of Labor and Economic Growth



Table 4

Office of Fire Safety Major GF/GP Reductions FY 2002-03 Through FY 2004-05		
GF/GP Reductions	Amount	Alternative Source of Funding
Executive Order 2003-3	\$(665,200)	Fire Service Fees
FY 2002-03 Early Retirement Savings	(63,700)	None
FY 2002-03 Budgetary Savings	(13,000)	None
FY 2003-04 Governor's Rec.	(856,600)	Construction Code Fund
FY 2004-05 Employee Related Savings	(2,600)	None
FY 2004-05 Governor's Recommendation	(1,590,000)	Construction Code Fund
FY 2004-05 Payroll Adjustment	(18,100)	None
Executive Order 2005-7	(95,100)	None
Total	\$(3,304,300)	

Current Shortfall

The expenditures from the Fire Service Fee Fund have exceeded revenue collections in recent years. Revenue for this Fund is dependent on the level of construction activity at schools and hospitals and the level of fees. According to the Department, one reason for the shortfall is fluctuation in construction activity, which was high in the early part of the decade. In addition, fees were increased in FY 2001-02. More recent years have seen less construction activity among the fee-payers (hospitals and schools) and high demands for the revenue due to the lack of GF/GP revenue to cover services to entities that receive services but do not pay fees, such as adult and child care centers, adult foster care homes, nursing homes, and homes for the aged. Table 5 shows the fire service fee revenue and expenditures in recent years.

Table 5

Fire Service Fee Fund Revenue and Expenditures		
	Revenue	Expenditures
FY 2002-03	\$2,437,300	\$2,858,500
FY 2003-04	1,483,300	2,151,900 ^{a)}
FY 2004-05	1,994,800	2,395,700
FY 2005-06 Est.	1,600,000	2,467,600

^{a)} Adjusted to correct accounting error.

Source: Department of Labor and Economic Growth

The Construction Code Fund has had similarly high demand for its resources. In recent years, expenditures from this Fund have exceeded collections. Revenue for this Fund peaks every third year when contractor license fees are due. The next peak year is FY 2006-07 as shown in Table 6.



Table 6

Construction Code Fund Revenue and Expenditures		
	Revenue	Expenditures
FY 2002-03	\$8,004,200	\$10,729,500
FY 2003-04	12,642,200	13,965,300
FY 2004-05 Est.	9,619,300	14,560,400
FY 2005-06 Est.	9,075,000	14,997,200
FY 2006-07 Est.	12,500,000	N/A

Source: Department of Labor and Economic Growth

These high rates of expenditures have been possible due to carry-forward balances that were available in the Funds. These balances are no longer available and the Department has indicated that due to the continuing imbalance between revenue and expenditures, both the Construction Code Fund and the Fire Service Fee Fund will be in deficit in FY 2005-06 in the absence of budget reductions or a fee increase. Estimates provided by the Department as of August 25, 2005, indicate a deficit in FY 2005-06 of \$0.6 million in the Construction Code Fund and \$0.8 million in the Fire Service Fee Fund. These figures are shown in Table 7.

Table 7

FY 2005-06 Estimated Fund Balances		
	Construction Code Fund (in millions)	Fire Service Fee Fund (in millions)
Estimated Opening Balance	\$5.3	\$0.1
Estimated Revenue	<u>9.1</u>	<u>1.6</u>
Estimated Funds Available	14.4	1.7
Estimated Expenditures	<u>15.0</u>	<u>2.5</u>
Estimated Closing Balance	\$(0.6)	\$(0.8)

Source: Department of Labor and Economic Growth

A longstanding issue with the fire safety programs involves the imbalance between institutions that pay fees for services and those that receive services but pay no fees. As shown in Table 8, inspection and maintenance fees are charged only to hospitals and certain health care facilities, while inspections are conducted at a range of facilities. The same is true for the plan review and construction inspection fees, as shown in Table 9. The revenue that is generated comes from two types of institutions, health care facilities and schools, while these reviews and inspections are provided to many other types of institutions.

State Notes

TOPICS OF LEGISLATIVE INTEREST

July/August 2005



Table 8

Fire Inspection and Maintenance Fees	
Fee Assessed	No Fee Assessed
Hospitals	Adult Foster Care
Ambulatory Surgical Center	Child Care Centers
County Medical Care Facility	Child Care Institutions
Freestanding Outpatient Facility/Ambulatory Surgical Center	Adult and Children's Camps
Hospital Long Term Care Unit	Child Care Residential Group Homes
Hospice	Corrections
Intermediate Care Facility for the Mentally Retarded	Child Care Centers, Nurseries, Head Start
Nursing Home (Medicaid)	Alternative Intermediate Services – Mentally Retarded
Nursing Home (Medicare)	Dormitories
Nursing Home (Medicaid and Medicare)	Homes for the Aged
	Psychiatric Hospitals
	Freestanding Surgical Outpatient Facility (Licensed Only)
	Nursing Home (Licensed Only)
	Juvenile Residential Group Homes
	Michigan State Police Facility
	State-Owned and Leased Buildings
	School
	College
	Charter School
	Non-Instructional School
	Schools, Other (e.g. Church Schools)
	Universities

Source: Department of Labor and Economic Growth

Table 9

Fire Service	
Plan Review and Construction Inspection Fees	
Fees Assessed	No Fee Assessed
Hospitals	Adult Foster Care
Ambulatory Surgical Center	Child Care Institutions
Dormitories	Adult and Children's Camps
Freestanding Surgical Outpatient Facility (Licensed Only)	Child Care Centers, Nurseries, Head Start Programs
Freestanding Surgical Outpatient Facility/Ambulatory Surgical Center	Alternative Intermediate Services – Mentally Retarded
Psychiatric Hospitals	Corrections
Non-Instructional School	Child Care Residential Group Homes
School Other (e.g. Church Schools)	County Medical Care Facility
School, Relocatable	Homes for the Aged
Charter Colleges	Hospital Long Term Care Unit
Charter School	Hospice
College	Nursing Homes
Schools	Juvenile Residential Group Home
Universities	Michigan State Police Facility
	State Leased and Owned
	Intermediate Care Facility for the Mentally Retarded

Source: Department of Labor and Economic Growth



Finally, the Department also has stated that the consolidation of the Office of Fire Safety into the Bureau of Construction Codes was intended to increase efficiencies. This has not been done to the level that was originally estimated, creating additional pressure on the Fire Service Fee Fund and decreasing the carry-forward balance.

Executive Recommendation

The Governor's recommendation for the FY 2005-06 DLEG budget included a fire service fee increase in Section 310 of the budget bill. The per-bed fee charge to hospitals for operation and maintenance inspections would be increased from \$8 to \$10. In addition, the plan review and construction inspection fees were expanded to apply to more types of institutions: adult foster care homes, homes for the aged, nursing homes, and penal institutions. The project cost ranges would be revised and fees would be revised. Inspections not requiring plan review would be charged at \$50 per hour. It is estimated that these increases would generate an additional \$1.8 million in revenue for the program. The fire service fee structure in effect in FY 2004-05 and the Governor's recommendation for FY 2005-06 are summarized in Table 10. The Department has indicated that the fee increase would be used to fund fire safety programs at the current level and reduce the reliance on the Construction Code Fund. The most recent estimates indicate that the fee increase would not entirely eliminate the deficit; however, the Department has stated that expenditure reductions could be made to avoid a deficit in the Construction Code Fund in FY 2005-06.

Table 10

Current Fire Service Fees And the Executive Recommendation			
FY 2004-05 P.A. 354 of 2004 - Section 310		FY 2005-06 Executive Recommendation	
Project Cost Range	Fee	Project Cost Range	Fee
\$101,000 or less (Minimum fee)	\$155.00	\$10,000 or less (Minimum fee)	\$155.00
\$101,001 to \$1,500,000	\$1.60 per \$1,000	\$10,001 to \$100,000	\$1.55 plus \$4.00 per \$1,000 over \$10,000
\$1,500,001 to \$10,000,000	\$1.30 per \$1,000	\$100,001 or more	\$515 plus \$2.00 per \$1,000 over \$100,000
\$10,000,001 or more	\$1.10 per \$1,000		
Maximum Fee	\$60,000	Maximum fee	\$60,000
		Fee for inspections where no plan review is required	\$50 per hour

Senate Action

The Senate concurred with the Governor's recommended appropriation amount for the Office of Fire Safety. However, the Senate did not include the fire service fee increase proposed by the Governor. Instead, the Senate maintained the current-year fee structure. Based on the Department's current revenue estimates, there is insufficient revenue in the Fire Service Fee

State Notes
TOPICS OF LEGISLATIVE INTEREST
July/August 2005



Fund and the Construction Code Fund to support the appropriations included in the Senate-passed bill, creating a \$1.4 million revenue shortfall in FY 2005-06.

House Action

The House concurred with both the Senate and the Governor in the level of the appropriation; however, it adopted different funding sources. The House did not include the increase in the fire service fees. It reduced the amount of fire service fee revenue supporting that line by \$1,642,800 from \$2,167,300 to \$524,500 and instead replaced that funding with \$1,642,800 of GF/GP revenue. The GF/GP revenue was made available from cuts to the Postsecondary Education line and the Michigan Community Service Commission. Since the House action, the Department has indicated that the GF/GP reductions in those programs will result in additional cuts in Federal funds that require a State match.

Conclusion

As it stands now, Senate Bill 276, the FY 2005-06 appropriation bill for the Department of Labor and Economic Growth, has been put in Conference. The Appropriation Committee chairs are awaiting recommendations from Senate and House leadership on budget decisions before scheduling any conference committee meetings. This issue will be addressed in those meetings.